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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,370	02/05/2002	Cathleen Woodall	2858	4346
26822	7590	12/11/2003		EXAMINER
WALTER A. HACKLER				HO, THOMAS Y
2372 S.E. BRISTOL, SUITE B				
NEWPORT BEACH, CA 92660-0755			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/073,370	Applicant(s)	WOODALL ET AL. <i>SW</i>
Examiner	Thomas Y Ho	Art Unit	3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 10/14/03.  
2a) This action is FINAL.      2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-3,5-11,13 and 14 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-3,5-11, and 13-14 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.  
13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
    a) The translation of the foreign language provisional application has been received.  
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 5-6, 8-10, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchison US2156629 in view of Grinnell US5297848.

As to claim 1, Hutchison discloses, a seat cushion comprising: a pair of generally flat pads 10,11 for supporting a user's buttocks; spaced apart arms 15',16', attached to and extending from the pads, for holding the pads in a spaced apart relationship, said arms being flexible (pg.2, ln.39-50) for enabling the pads to be oriented in both a planar relationship for supporting the user's buttocks and a folded parallel plane relationship (the limitation "for enabling ... relationship" is purely functional language and holds little patentable weight because it does not further define the structure of the claimed invention; furthermore, the flexible arms 15',16' could perform the claimed function), the arms 15',16' including forearms 15' and aftarms 16'. The difference between the claim and Hutchison is the claim recites, a hinged handle disposed between the pads for carrying said seat cushion; the pads and handle held in a spaced apart relationship, and enabling grasping of said hinged handle by the user, for enabling transport of said seat cushion by the handle, forearms and aftarms (already disclosed by Hutchison) each joined to opposite ends of said hinged handle for holding said hinged handle in a spaced apart relationship with the folded pads. Grinnell discloses a hinged handle 80 disposed between the

pads 10,40 for carrying said seat cushion; the pads and handle held in a spaced apart relationship (clearly there is space between the handle 80 and either of the pads 10 or 40), and enabling grasping of said hinged handle by the user, for enabling transport of said seat cushion by the handle, forearms and aftarms (already disclosed by Hutchison) each joined to opposite ends of said hinged handle for holding said hinged handle in a spaced apart relationship with the folded pads. It would have been obvious to one of ordinary skill in the art, having the disclosures of Hutchison and Grinnell before him at the time the invention was made, to modify the pads and connecting arms of Hutchison to have a handle, as in Grinnell, to obtain a handle for a seat cushion. One would have been motivated to make such a combination, because the ability to carry the apparatus AND for holding the cushion on a seat would have been obtained, as taught by Grinnell (col.4, ln.40-55).

Grinnell shows a handle 80 attached to the opposing sides of the connecting part 70 between two pads 10,40. The modification of Hutchison with the handle of Grinnell would put the handle on the opposing sides of the connecting part 15',16' of Hutchison.

As to claim 2, Hutchison discloses, the seat cushion according to claim 1 wherein said arms 15',16' are recessed from a top of each of the pads 10,11 for enabling the user's coccyx to depend between the pads in order to prevent pressure on the coccyx. Grinnell teaches said handle 80 being recessed (see Figure 2).

As to claim 5, Hutchison discloses, the seat cushion according to claim 1 wherein each of the pads 10,11 include an arcuate forward perimeter, the forward perimeters being joined by the forearms 15'.

As to claim 6, Hutchison discloses, the seat cushion according to claim 5, wherein each of the pads 10,11 include an arcuate rearward perimeter, the rearward perimeter being joined by the aftarms 16'.

As to claim 8, Hutchison discloses, a seat cushion comprising: a pair of generally flat pads 10,11 for supporting a user's buttocks, the pads having mirror image perimeters; spaced apart arms 15',16', attached to and extending from the pads, for holding the pads 10,11 in a spaced apart relationship, the arms being flexible for enabling the pads to be oriented in both a planar relationship for supporting the user's buttocks and a folded parallel plane relationship, the arms including forearms 15' and aftarms 16'. Grinnell teaches a single hinged handle disposed between the pads for carrying said seat cushion; and enabling grasping of said hinged handle by the user, for enabling transport of said seat cushion by the hinged handle, forearms and aftarms (already shown by Hutchison) each joined to opposite ends of said hinged handle for holding said hinged handle in a spaced apart relationship with the folded pads.

As to claim 9, Hutchison discloses, the seat cushion according to claim 8, wherein said arms 15',16' have a thickness smaller than a thickness of the pads 10,11 and are disposed between the pads for enabling the user's coccyx to depend between the pads in order to prevent pressure on the coccyx. Grinnell teaches the handle having a smaller thickness than the pads.

As to claim 10, Hutchison discloses, the seat cushion according to claim 9 wherein the handle arms 15',16' and pads 10,11 each have a bottom surface disposed in a single plane with the pads oriented for supporting the user's buttocks.

As to claim 13, Hutchison discloses, the seat cushion according to claim 8 wherein each of the pads 10,11 include an arcuate forward perimeter, the forward perimeters being joined by the forearms 15'.

As to claim 14, Hutchison discloses, the seat cushion according to claim 13 wherein each of the pads 10,11 include an arcuate rearward perimeter, the rearward perimeter being joined by the aftarms 16'.

Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchison US2156629 in view of Grinnell US5297848, and further in view of Sweeney US4031578.

As to claim 3, Hutchison discloses, the seat cushion according to claim 2. The difference between the claim and Hutchison is the claim recites, wherein the pads, arms and hinged handle are integrally molded. Sweeney discloses a pad similar to that of Hutchison. In addition, Sweeney further teaches that it could be desirable to integrally mold the device. It would have been obvious to one of ordinary skill in the art, having the disclosures of Hutchison and Sweeney before him at the time the invention was made, to integrally mold the elements of Hutchison, as taught by Sweeney, to achieve an integrally molded pad. One would have been motivated to make such a combination, because the ability to form the pad of unitary construction would have been achieved, as taught by Sweeney (col.4, ln.59-65). Furthermore, the term "integral" does not require a unitary one-piece structure. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

As to claim 11, Hutchison discloses, the seat cushion according to claim 10. Sweeney teaches wherein the pads, arms and hinged handle are integrally molded.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchison US2156629 in view of Grinnell US5297848, and further in view of Skibik US5611098.

As to claim 7, Hutchison discloses, the seat cushion according to claim 2. The difference between the claim and Hutchison, is the claim recites, further comprising means for releasably holding the pads in the parallel planar relationship. Skibik discloses a cushion/pad similar to that of Hutchison. In addition, Skibik further teaches a means 26,27,37 for releasably holding the pads 12,13 in the parallel planar relationship. It would have been obvious to one of ordinary skill in the art, having the disclosures of Hutchison and Skibik before him at the time the invention was made, to modify the pads of Hutchison to have the means for holding, as in Skibik, to obtain a means for holding the pads in parallel planar relationship. One would have been motivated to make such a combination because the ability to secure the members together in a closed condition would have been achieved, as taught by Skibik (col.4, ln.1-17).

*Response to Arguments*

Applicant's arguments filed 10/14/03 have been fully considered but they are not persuasive.

Applicant's arguments against the combination of Hutchison in view of Grinnell are traversed for the following reasons:

The combination of Hutchison and Grinnell would place a handle 80 of Grinnell on the arms 15',16' of Hutchison. This modification would meet all claimed limitations, and functional recitations of the claims.

The arms 15',16' of Hutchison are spaced apart from the pads 10,11 of Hutchison. The arms 15',16' of Hutchison are analogous to the arm 70 of Grinnell. Grinnell clearly shows that

Art Unit: 3677

the handle 80 is not directly connected in any way to the pads 10,40, and so the handle 80 of Grinnell teaches that the handle is in a spaced apart relationship with the folded pads (see Figure 5 in Grinnell), and the arm 70 of Grinnell holds the hinged handle 80 apart from the pads 10,40 in folded position. Therefore, the modification of Hutchison with the handle of Grinnell would also keep the pads and handle spaced apart in folded position, and would not suggest otherwise.

The motivation for the combination of Hutchison and Grinnell is that the Grinnell reference teaches the benefits of having a strap or handle to carry the pad from seat to seat. Applicant argues that the straps of Hutchison teach that the Hutchison device is not meant to be portable. The Examiner believes the exact opposite. The fact that Hutchison uses securing straps to secure the pads 10,11 to a seat, show that the device is meant to be portable. The use of adjustment straps is an old and well-known method of securement in the art, used specifically to allow for easy adjustment and removal. If Hutchison did not want his apparatus to be portable, he would have permanently affixed the apparatus to the seat. Furthermore, Grinnell teaches that the carrying handle 80 is also a securing strap (col.4, ln.50-55) to secure the pads on the chair seat. This clearly shows that having a strap to connect a cushion to a seat does not inherently teach that the cushion is not meant to be portable.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Grinnell does not need to show arms, forearms, and aftarms because these elements are already disclosed by the base reference of Hutchison. Grinnell is a reference used only to teach the handle.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Y Ho whose telephone number is (703)305-4556. The examiner can normally be reached on M-F 10:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J Swann can be reached on (703)306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-1113.

TYH

  
J. J. SWANN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600